

### **REMARKS**

The September 19, 2007 Office Action was based upon pending Claims 1-40. This Amendment amends Claims 4, 7, 9, 15, 16, 22, 26, 28 and 33 and cancels Claims 1-3, 6, and 35-40 without prejudice as indicated above. Thus, after entry of this response, Claims 4, 5, and 7-34 are pending and presented for further consideration.

#### **Issues Raised in the Office Action**

The Office Action rejected Claims 15, 33 and 39 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Further, the Office Action rejected Claims 1, 2, 4, 7-11, 13-15, 17, 21-23, 25-29, and 33-37 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,644,726 to Oppenheimer (hereinafter "Oppenheimer").

In addition, the Office Action rejected Claims 3, 16, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Oppenheimer.

The Office Action also rejected Claims 5, 6, 12, 18-20, 31, 32 and 38-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oppenheimer, in view of U.S. Patent No. 6,192,347 to Graff (hereinafter "Graff").

#### **Supplemental Information Disclosure Statement**

Submitted concurrently herewith is a Supplemental Information Disclosure Statement citing 3 new references which recently came to Applicant's attention in co-pending U.S. Patent Application No. 10/714,923. Applicant respectfully requests the Examiner to consider the pending claims in connection with these references in order to make them of record.

#### **Rejection of Claims 15, 33 and 39 under 35 U.S.C. §112**

The Office Action rejected Claims 15, 33 and 39 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claims 15 and 33

With respect to Claims 15 and 33, the Office Action rejected the following limitation as unclear: "...the HES entity will manage all real estate related transactions..." Accordingly, Applicant has amended Claims 15 and 33 to delete "all" and add "one or more."

Claim 39

Applicant has canceled Claim 39 without prejudice or disclaimer.

**Rejection of Claims 1, 2, 4, 7-11, 13-15, 17, 21-23, 25-29, and 33-37**

The Office Action rejected Claims 1-2, 4, 7-11, 13-15, 17, 21-23, 25-29, and 33-37 under 35 U.S.C. §102(b) as being anticipated by Oppenheimer.

Claims 1 and 2

Applicant has canceled Claims 1 and 2 without prejudice or disclaimer.

Claim 4

Applicant has amended Claim 4 to focus in part on the novel and inventive partial equity interest in a residential property. This unique partial equity interest defines multiple rights for both a homeowner and an investor as set forth in Claim 4.

The system described in Oppenheimer, in contrast, does not appear to be an equity interest in a residential property. Rather, Oppenheimer refers to a combined mortgage that has both a debt and an equity component.

Claim 4 is directed to a partial equity interest, not a debt financing. For example, Oppenheimer requires a formulae to calculate anticipated returns to the lender on the equity portion and are then reflected in the homeowner's monthly payments in combination with the conventional payments required on the debt side of the mortgage.

In addition, Oppenheimer envisions a mortgage vehicle that relies on a totally different approach to the agreement with a property owner. In at least one embodiment, Oppenheimer requires for the property owner and the lender to enter into a 50/50 joint venture for title to the home. Oppenheimer's joint venture format,

however, could be disastrous financially for the homeowner in terms of today's tax laws. Since the partnership would be the title holder on the house, the current personal tax benefits accruing to a homeowner could be in jeopardy.

That is, the owner in Oppenheimer could lose 50% -- and maybe all -- of the current tax deductions for mortgage interest and property taxes and would certainly lose the entire benefit of the capital gains exemption of \$500,000 for husband and wife, which is only available for owner-occupied housing.

Thus, Oppenheimer fails to teach the creation of the novel partial equity interest with homeowner rights and investor rights as set forth in Claim 4.

In addition, the attached Supplemental Information Disclosure Statement lists three new references cited by the Examiner in co-pending U.S. Patent Application No. 10/714,923. In particular, the Examiner relies on two of the references, U.S. Patent Publication Nos. 2002/0091623 and 2004/0158515 to reject the pending claims. With respect to these references, Applicant notes that none of these references describe subdividing residential properties into partial equity interests for real estate investment opportunities.

Residential properties are much different than commercial properties in that the rights of the homeowner and the investor need to be addressed. Furthermore, none of the cited references describe the novel property rights as set forth in Claim 4.

Because the references cited by the Examiner are submitted in the Supplemental Information Disclosure Statement do not disclose, teach or suggest the limitations of amended Claim 4, Applicant asserts that Claim 4 is not anticipated by Oppenheimer or any of the other references.

Applicant therefore respectfully submits that Claim 4 is patentably distinguished over the cited references and Applicant respectfully requests allowance of Claim 4.

Claim 7

Although Claim 7 has different language than Claim 4, Claim 7 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

Claims 8-11, 13-15, 17, 21-23, 25-29 and 33-34

Claims 8-11, 13-15, 17, 21-23, 25-29 and 33-34 which depend from Claim 7, are believed to be patentable for the same reasons articulated above with respect to Claim 7, and because of the additional features recited therein.

Claims 35-37

Applicant has canceled Claims 35-37 without prejudice or disclaimer.

**Rejection of Claims 3, 16, 24 and 30**

The Office Action rejected Claims 3, 16, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Oppenheimer.

Claim 3

Applicant canceled Claim 3 without prejudice or disclaimer.

Claims 16, 24 and 30

Claims 16, 24 and 30 depend from Claim 7, and are believed to be patentable for the same reasons articulated above with respect to Claim 7, and because of the additional features recited therein.

**Rejection of Claims 5, 6, 12, 18-20, 31, 32 and 38-40**

The Office Action rejected Claims 5-6, 12, 18-20, 31-32 and 38-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oppenheimer, in view of Graff.

Claims 5 and 6

Claims 5 and 6 depend from Claim 4, and are believed to be patentable for the same reasons articulated above with respect to Claim 4, and because of the additional features recited therein.

The real estate market has existed for thousands of years and at no time, has anyone created the partial equity interest in a residential property as set forth in Claim 4. Thus, Applicant respectfully submits that it would not have been obvious to create Applicant's invention.

Furthermore, even if Oppenheimer could be combined with Graff (which they cannot), the combination of references would not teach the claimed novel partial equity interest in a residential property as set forth in Claims 4, 5 and 6.

Claims 12, 18-20, 31 and 32

Claims 12, 18-20, 31 and 32 depend from Claim 7, and are believed to be patentable for the same reasons articulated above with respect to Claim 7, and because of the additional features recited therein.

The real estate market has existed for thousands of years and at no time, has anyone created the partial equity interest in a residential property as set forth in Claim 7. Thus, Applicant respectfully submits that it would not have been obvious to create Applicant's invention.

Furthermore, even if Oppenheimer could be combined with Graff (which they cannot), the combination of references would not teach the claimed novel partial equity interest in a residential property as set forth in Claim 7 and Claims 12, 18-20, 31 and 32.

Claims 38-40

Applicant canceled Claims 38 and 40 without prejudice or disclaimer.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references.

Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at

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a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution.

Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

**Co-Pending Applications of Assignee**

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

<b>Application Number</b>	<b>Title</b>	<b>Filed</b>
10/714,922	System And Method For Creating, Selling, And/Or Managing Property Funds In An Investment Market	11-18-2003
10/714,923	System For Conducting A Home Equity Sales Program	11-18-2003
10/714,924	Method For Conducting A Home Equity Sales Program	11-18-2003
11/896,927	Method For Conducting A Home Equity Sales Program	09-06-2007

Applicant notes that cited references, and office actions currently exist for the above-referenced matters. Applicant also understands that the Examiner has access to sophisticated online Patent Office computing systems that provide ready access to, for example, specification and drawing publications, pending claims and complete file histories, including, for example, cited art, office actions, responses, and notices of allowance. In addition, Applicant respectfully requests that the Examiner continue to review these file histories for current information about these matters.

**Conclusion**

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 3-18-08

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